



CITY OF WHEATLAND

NUISANCE ABATEMENT APPEAL HEARING BEFORE THE PLANNING COMMISSION

STAFF REPORT

November 1, 2016

SUBJECT: Appeal of Nuisance Abatement Order Concerning the Property at 408 2nd Street, Wheatland, CA (APN 015-243-0004)

PREPARED BY: Greg Greeson, City Manager
Mike Langford, City Building Inspector

Recommendation

City staff recommends that the City of Wheatland Planning Commission (Commission) confirm the August 4, 2016 nuisance abatement order issued by the City's nuisance abatement hearing committee for the above-referenced property (the "Property"). As discussed below, upholding this order would give the Property owner 20 days (by November 21, 2016) to commence abatement of the nuisances on the Property (i.e., remove the identified items) and until December 31, 2016 to complete such abatement as described in the nuisance abatement order.

Procedural Background

Following a long history of written communications with the Property owner, James Allen, and meetings between City staff and Mark Allen, the Property owner's son and tenant (discussed below), the City sent the Allens a notice of abatement and request to abate on June 16, 2016 pursuant to Wheatland Municipal Code ("Code") section 8.08.060. Because the Allens did not timely comply with the notice, City staff thereafter sent the Allens a notice of hearing to abate the nuisance on July 1, 2016. Following the August 2, 2016 hearing before the nuisance abatement hearing committee (a three-person committee appointed by the Mayor), the committee issued its nuisance abatement order on August 4, 2016. The Allens submitted its written appeal of the order on August 15, 2016, and City staff sent the notice of hearing on the appeal on October 4, 2016 after several discussions with the Allens regarding their availability (the Property owner resides in Washington).

Discussion

I. City's History with the Property

Since 2004, the City has had numerous interactions with the Allens regarding various violations of the City's ordinances at the Property, mostly regarding the Allens were using a mobile trailer as an office or residence and had constructed a warehouse for storing automotive parts without obtaining the necessary permits from the City.

The Allens thereafter obtained a conditional use permit from the City on May 18, 2005 (Exhibit 1) that included the following conditions:

- Modifications to the existing building must comply with the City's zoning requirements;
- Outdoor storage was prohibited; and
- All existing outdoor storage must be removed from the site within 6 months of the City's issuance of a certificate of occupancy.

In July 2005, City staff inspected the Property and identified numerous conditions on the Property that created hazards to the occupancy, including the prohibited storage of various materials and chemicals inside and outside the premises. It appears that the City attempted to work with the Allens to cure these conditions, which violated the conditional use permit, on the Property. However, the City did not take any formal follow-up action until around September 2012, when the City sent a letter to the Allens detailing various conditions on the Property that violated the Code. (Exhibit 2). Those conditions were not remedied following their receipt of the letter.

II. Timeline of Events Leading to Nuisance Abatement Determination

Date	Action
<u>October 10, 2014</u>	Mark Allen submitted a 12-week "Plan of Action and Timeline" ("2014 Plan") to clean up the Property (Exhibit 3)
<u>September 30, 2015</u>	City Attorney's office sent the Allens a letter stating that if the actions stated in the 2014 Plan were not substantially completed by November 2015, the City may commence administrative citation proceedings and issue a compliance order pursuant to the Code, which would subject the Allens to various fines and penalties. (Exhibit 4)
<u>December 22, 2015</u>	City Building Inspector Mike Langford met with Mark Allen to discuss continuing Code violations on the Property on October 6, 2015. Mark Allen requested an extension for complying with the 2014 Plan, stating he would be out of town for significant amounts of time for the rest of the year. On December 22, 2015, City staff granted the request, extending the deadline to January 31, 2016 by notifying James Allen via Certified Mail (with a copy to Mark Allen). (Exhibit 5)
<u>February 4, 2016</u>	Mr. Langford conducted an inspection of the Property and took 28 pictures (Exhibit 6); he confirmed that Code violations remained on the Property and Mark Allen did not comply with the January 31 st deadline for cleaning up the Property.
<u>April 6, 2016</u>	City sent James Allen (with a copy to Mark) a final warning letter stating that, if the Property was not cleaned up to the City's satisfaction by May 24, 2016, the City would commence nuisance abatement proceedings pursuant to chapter 8 of the Code. (Exhibit 7) Following receipt of this letter, Mark Allen requested a list of prior notifications provided by the City concerning the Property. (Exhibit 8)
<u>April 26, 2016</u>	City Manager Greg Greeson and Mr. Langford met with Mark Allen at City Hall and provided him with the requested list. Mark described his attempts to open a transmission repair business in the City and recounted previous allegations that he had made in 2005 against City and Yuba County officials, who he claimed prevented his business

venture from succeeding. City staff offered to review copies of City Council meeting minutes for meetings at which Mark alleged wrongful statements were made against him. Mark did not provide these dates or additional information. Moreover, City staff pointed out that none of these allegations related to the Property, which was the focus of the City's code enforcement action.

City staff stated that while they were sympathetic to Mark's circumstances, they no longer could allow the Allens to continue ignoring the City's repeated requests to clean up the Property and comply with applicable City zoning, land use, and health and regulations. Staff further stated that if the Allens could demonstrate substantial compliance with the City's April 6 warning letter, then the City would be willing to consider providing them additional time to remove certain items on the Property.

<u>May 19, 2016</u>	The City sent James Allen a letter summarizing the April 26 discussions between City staff and Mark Allen and included a copy of the list requested by Mark. (Exhibit 9)
<u>May 24, 2016</u>	Mr. Langford conducted an inspection of the Property and took 18 pictures. He concluded that little to no clean-up had been done at the Property and that the Allens had not complied with the April 6 warning letter. (Exhibit 10)
<u>June 16, 2016</u>	The City sent James Allen a notice of abatement and request to abate via U.S. Certified Mail (with a copy to Mark Allen) pursuant to section 8 of the Code. The notice requested that the listed nuisances on the Property be abated no later than June 30, 2016. (Exhibit 11)
<u>June 30, 2016</u>	Mr. Langford conducted an inspection and took 27 pictures of the Property; he concluded that the Allens had not complied with the City's June 16 notice. (Exhibit 12)
<u>July 1, 2016</u>	The City sent James Allen a notice of public abatement nuisance hearing via Certified Mail (with a copy to Mark Allen) informing him that a hearing had been scheduled for August 2, 2016 at 6:00 p.m. at the Wheatland Community Center to determine whether the conditions on the Property constituted a public nuisance under the Code. (Exhibit 13)
<u>July 26, 2016</u>	The City sent a follow-up notice to the Allens indicating that the time of the hearing was moved to 6:30 p.m. due to a scheduling conflict.
<u>August 2, 2016</u>	A hearing before the City's nuisance abatement hearing committee was conducted. Following the hearing, the committee determined that a public nuisance existed on the Property.
<u>August 4, 2016</u>	The nuisance abatement committee's order was sent to James Allen via U.S. Certified Mail (with a copy to Mark). (Exhibit 14)
<u>August 15, 2016</u>	The Allens submitted their notice of appeal to the City. (Exhibit 15)
<u>October 4, 2016</u>	Following several communications with Mark Allen concerning his father's and his availability, the City sent James Allen a notice of hearing on the nuisance abatement appeal via U.S. Certified Mail (with a copy to Mark) stating that a hearing has been scheduled for November 1, 2016 at 6:00 p.m. at the Wheatland Community Center before the City's Planning Commission. (Exhibit 16)

III. Nuisance Conditions on the Property

As demonstrated by the timeline above, City staff has attempted to work with the Allens over a number of years to clean up the Property and remove the items listed on the City's various notices and letters. However, the Allens have repeatedly failed to comply with agreed-upon timelines and have continued to store prohibited items, including vehicles and equipment, on the Property in violation of the City's ordinances.

Chapter 8 of the Code sets forth the conditions that constitute a nuisance as well as the procedures that the City must follow for abating a nuisance. Section 18.08.040 of the Code states that it is unlawful for any "responsible person" (which includes a property owner, tenant, agent, lessee, or other user of the property that causes, maintains, or allows the prohibited conditions) to maintain, or allow to be maintained, property in the City in a manner prohibited by section 18.08.040. These conditions include the following, all of which were observed by Mr. Langford at the Property:

- Unlawful outdoor storage and conditions
 - Accumulation of abandoned, discarded or dilapidated objects, including dismantled or inoperative vehicles, vehicle parts and equipment, machine parts, containers, packing boxes and materials, lumber and wood, pallets, salvage materials, and similar matter that constitutes a threat to public health or safety or renders any premises unsightly and detrimental to the general public welfare
 - Failure to maintain property such that conditions that are dangerous and accessible to children or other members of the public, including neglected or unsupervised vehicles, machinery, and equipment, are allowed to be stored on the property
 - Materials stacked above any fence or otherwise stored or stacked on a property in a disorderly or unsightly manner
 - Storage of recreation vehicles, motor vehicles, parts thereof, or other articles of personal property that are left in a state of partial construction or disrepair.
 - Storage of firewood or other flammable materials other than in compliance with standards relating to the safe storage of combustible materials established in writing by the Wheatland Fire Authority or by applicable federal, state, or local law.
- Maintenance of stagnant water, combustible materials, machinery, equipment or similar materials that constitute a fire, health, or safety hazard or other danger to public health, safety or welfare
- Any other condition or use of property that the City's enforcement officer reasonably determines to be a threat to the public peace, health, safety or welfare because (i) the condition or use renders the property unsafe, dangerous or hazardous; (ii) the condition or use is so out of harmony with the standards, conditions and uses of properties in the vicinity as to cause substantial diminution of the enjoyment, use or value of such other property.
- Failure to comply with the requirements set forth in any city zoning approval or permit applicable to the premises.

At the August 2, 2016 hearing before the nuisance abatement hearing committee, Mark Allen stated, among other things, that there were several items of high value (i.e., to be displayed in a yet-to-be constructed museum of Mother Lode Gold Mining) being stored on the Property and that he was waiting to obtain a permit from Grass Valley so that he could transfer the items

included in the City's notices to their property in Grass Valley. While City staff is sympathetic to the Allen's circumstances, the City cannot permit the nuisances on the Property to continue, regardless of the value the Allens ascribe to the items stored on the Property. The Allens have had numerous opportunities to address the City's concerns. Despite having what appeared to City staff to be several productive meetings with City staff and despite receiving several warnings (and subsequent time extensions) from the City to clean up the Property, however, the Allens continue to refuse to comply with the Code.

City staff has complied with the procedures set forth in chapter 8 of the Code, and recommend that the Planning Commission confirm the nuisance abatement hearing committee's August 4, 2016 order.

Under section 8.08.110 of the Code, if the Commission confirms the committee's order by resolution, the Allens will have until December 31, 2016 within which to abate the nuisances on the Property and complete the abatement actions listed in the resolution, a draft of which is provided for the Commission's consideration. (Exhibit 17)

The Allen's appeal letter states that the photos of the Property that were taken by the City and attached as exhibits to this staff report do not fairly portray the Allen's progress in complying with the City's requests, and that the lists of items included in the August 4 order includes some items that already had been removed. Because the City's last inspection of the Property was conducted in June 2016 — almost five months ago, it is possible that the list contains items that had been removed by the Allens since that time. It also may not identify items that the Allens could have added to the Property since that time. City staff will work diligently with the Allens to ensure that any abatement action takes these removed items into account. Mr. Langford has scheduled an inspection of the Property on October 28, 2016 to update the list attached to the sample resolution to accurately reflect the items that the Allens must remove from the Property.

List of Exhibits:

- Exhibit 1: 2005 conditional use permit
- Exhibit 2: September 2012 letter from the City to the Allens
- Exhibit 3: 2014 "Plan of Action and Timeline" submitted by Mark Allen to the City
- Exhibit 4: September 30, 2015 letter from the City to the Allens
- Exhibit 5: December 22, 2015 letter granting extension to James and Mark Allen
- Exhibit 6: Pictures of the Property taken by City Building Inspector Mike Langford on February 4, 2016
- Exhibit 7: April 6, 2016 final warning letter from the City to the Allens
- Exhibit 8: "List of prior notifications" requested by Mark Allen and provided by the City
- Exhibit 9: May 19, 2016 letter from the City to James Allen
- Exhibit 10: Pictures of the Property taken by Mr. Langford on May 24, 2016
- Exhibit 11: June 16, 2016 notice of abatement and request to abate
- Exhibit 12: Pictures of the Property taken by Mr. Langford on June 30, 2016
- Exhibit 13: July 1, 2016 notice of public nuisance abatement hearing
- Exhibit 14: August 4, 2016 nuisance abatement order
- Exhibit 15: August 15, 2016 notice of appeal submitted by the Allens to the City
- Exhibit 16: October 4, 2016 notice of appeal hearing
- Exhibit 17: Resolution confirming nuisance abatement order